IN THE SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1902.

BERT ROSS, *Appellant*,

vs.

MARTIN AGUIRRE, Warden of the State Prison of the State of California, at San Quentin, California, *Appellee*.

No. 228.

APPELLANT'S BRIEF IN REPLY.

In the brief filed by the Attorney General of the State of California on behalf of the appellee, no answer is made to Points I, II, and III of appellant's brief, nor is it suggested that any of them admits of any answer. We may therefore assume that the correctness of those points is not disputed.

But counsel for appellee take issue with us as to the constitutionality of the Act of the legislature of California of March 23, 1893, (*Stats. Cal.* 1893, p. 297,) entitled "An Act

"to amend sections 204, 205, 206, and 208 of the Code of "Civil Procedure". We showed, at pages 16 to 20 of our brief, that the Supreme Court of California, in the case of *Lewis* v. *Dunne,* 134 Cal. 291, had held that an act with such a title is void under the constitution of the state; and that that court, in that case, if it did not expressly overrule the prior case of *People* v. *Parvin,* 74 Cal. 549, had at least limited its application to acts amending *a single section* of one of the codes. Counsel for appellee contend that the decision in *People* v. *Parvin* was not there so limited, but remains of full authority, and supports the constitutionality of the act here in question.

The reason assigned by counsel for their contention may be reduced to the proposition that the act considered in *Lewis* v. *Dunne* was there held void on other grounds than that stated by us, which grounds were sufficient to support the judgment in that case. But a decision of an appellate court cannot be thus construed. Where several independent reasons are assigned by the court for its decision, neither one of them can be considered as mere *dictum,* though either one alone would have been sufficient. Each point arising in the case, and actually passed on, is a decision by the court of a point of law, and of authority as a precedent, although the case could have been rested on one of several such points.

Camron v. *Kenfield,* 57 Cal. 550;
Gwinn v. *Hamilton,* 75 Cal. 265;
Porter v. *Muller,* 112 Cal. 355, 366.

While, then, it is true that, in *Lewis* v. *Dunne,* the court laid some stress on the fact that, in the title of the act there

in question, none of the code sections attempted to be amended were mentioned by number, that proposition, if a ground of decision at all, (which we doubt,) was only *one* of the grounds upon which the court based its conclusion. The court *did* assign, as one of those grounds, if not the principal ground, that a mere reference in the title of an amendatory act, to "the Code of Civil Procedure" does not state any subject whatever; and the court further *did* expressly decide, that, if there be any exception to that rule, it must be confined to an act amending only one single section of that code.

A brief reference to the course of decision in California on this subject, will make the meaning of that opinion clear.

The former constitution of the state contained a somewhat similar requirement as to the titles of acts; but the court held that that provision was merely directory, and was one to be enforced by the legislature only and not by the courts.

Pierpont v. *Crouch,* 10 Cal. 315.

To remedy that defect, the stringent provisions quoted on page 17 of our opening brief, were inserted in the present constitution; and it has since been uniformly held that an act, the title of which does not *"express"* its subject, is void.

Fatjo v. *Pfister,* 117 Cal. 83, 86;
Los Angeles v. *Hance,* 122 Cal. 77;
In re Werner, 129 Cal. 567, 570-572;
People v. *Curry,* 130 Cal. 82, 90-91;
Pratt v. *Browne,* 135 Cal. 649, 653.

Accordingly, in deciding *Lewis* v. *Dunne,* the court, taking its stand on that rule, considered but one question,

namely, whether or not the *subject* of the act there in controversy was sufficiently *expressed* in its title. In discussing that question, the court used the language quoted by us at pages 18 to 20 of our opening brief; which does completely decide the question in the present case. The court said that "'the Code of Civil Procedure of the State of California' " is merely a name given to a large part of the general laws " of the state", which laws are "not confined to any particu- " lar subject or subjects"; and that, therefore, "no one could " tell *from the title alone* what subject of legislation was " dealt with in the body of the act". In answer to that objection, the respondent in that case contended that the prior case of *People* v. *Parvin* had sustained the sufficiency of such titles. That contention was disposed of by the court by the language quoted by us on pages 19 and 20. That language, we submit, clearly amounts to a disapproval of that case;—and certainly that case is wholly inconsistent with the other language we have quoted. But, whether the court did or did not say that it disapproved of that case *in toto,* it certainly *did* hold, explicitly and decisively, that that case was not an authority as to such a title if the amendatory act purports to amend more than one section. That is unquestionably what the court held; and whether it did or did not correctly construe its prior opinion, the construction which it did put upon it is all that saved it from being expressly overruled.

We submit, therefore, that under the rule declared in *Lewis* v. *Dunne,* the title of the act here in question is fatally insufficient, and that *People* v. *Parvin* is not considered by the Supreme Court of this state as an authority to the con-

trary. As the only question is, What is the law of California? and as the latest decision of its highest court furnishes the only guide for this Court on the question, that decision should be followed here, whatever might be thought as to its correctness.

If there be a case to which the rule there declared applies in its fullest force, it is the one at bar. The *body* of the act here relied on by counsel for the appellee, undertakes to prescribe a method for the selection and impanelment of grand juries in *criminal* cases; yet, by its *title,* it purports merely to amend sections 204, 205, 206, and 208 of the Code of *Civil* Procedure. Surely, no one, *from that title alone,* could tell that the act in fact dealt with a matter of *criminal* legislation,—especially as the state has a code, called the "Penal Code", concerned with such matters. But for the reference, in that title, to the "Code of Civil Procedure", no one would for a moment contend that *any* subject was therein expressed; and, as it was clearly and unequivocally decided in *Lewis* v. *Dunne* that those words express no subject whatever, there can be no doubt that this title is fully within the rule there laid down.

Respectfully submitted,

W. C. VAN FLEET AND
W. B. TREADWELL,
For Appellant.